

# APPENDIX MERGER CONDITIONS

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## APPENDIX MERGER CONDITIONS

### 1. MERGER CONDITIONS

- 1.1 For purposes of this Appendix only, **SBC WISCONSIN** is defined as one of the following ILECs, as appropriate, in those geographic areas where the referenced SBC-owned Company is the ILEC: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P., d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.
- 1.2 The Parties agree to abide by and incorporate by reference into this Appendix the FCC Merger Conditions to the extent that particular conditions have not yet terminated (sunset) and which are specifically addressed herein or relate to any provisions set forth herein.
- 1.3 Each of the obligations set forth in this Appendix terminates the earlier of: (1) the date this Agreement itself terminates without reference to this Appendix; or (2) the date such obligation terminates under the FCC Merger Conditions.

### 2. DEFINED TERMS; DATES OF REFERENCE

- 2.1 Unless otherwise defined in this Appendix, capitalized terms shall have the meanings assigned to such terms in the Agreement without reference to this Appendix and in the FCC Merger Conditions.
- 2.2 For purposes of calculating the intervals set forth in the FCC Merger Conditions concerning carrier to carrier promotions:
  - 2.2.1 the Merger Closing Date is October 8, 1999; and
  - 2.2.2 the Offering Window begins November 7, 1999.
- 2.3 "FCC Merger Conditions" means the Conditions for FCC Order Approving SBC/Ameritech Merger, CC Docket No. 98-141.

### 3. PROMOTIONAL DISCOUNTS ON UNBUNDLED LOCAL LOOPS USED FOR RESIDENTIAL SERVICES

- 3.1 Notwithstanding anything to the contrary in this Appendix or Agreement, **SBC WISCONSIN** is under no obligation to provide a Local Loops Discount outside the "Promotional Period" as defined in paragraph 46.c of the Merger Conditions, which provides that the Promotional Period "shall be a period of 36 months from the date a qualifying unbundled local loop [was] installed and operational, or the period during which the loop remains in service at the same location and for the same telecommunications carrier, whichever is shorter."
- 3.2 **SBC WISCONSIN** will provide CLEC access to unbundled 2-Wire Analog Loop(s) for use by CLEC in providing local service to residential end user customers, during the "Promotional Periods" applicable to such loop, as defined in Paragraph 46 of the FCC Merger Conditions and in this Appendix. The rates are reflected in Paragraph 46 of the FCC Merger Conditions. Such provision of loops is subject to CLEC's qualification and compliance with the provisions of the FCC Merger Conditions.
- 3.3 If CLEC does not qualify for the Local Loops Discount set forth in Paragraph 46 of the FCC Merger Conditions, **SBC WISCONSIN**'s provision, if any, and CLEC's payment for unbundled Loops shall continue to be governed by Appendix Section 251(c)(3) as currently contained in this Agreement without reference to this Appendix. Unless **SBC WISCONSIN** receives thirty (30) days advance written notice with instructions to terminate the unbundled Local Loop provided with the Local Loops Discount

- or to convert such service to an available alternative service provided by SBC WISCONSIN, then upon expiration of the Promotional Discount for any unbundled Local Loop, the loop shall automatically convert to an appropriate SBC WISCONSIN product/service offering pursuant to the rates, terms and conditions of the Agreement without reference to this Appendix or, in the absence of rates, terms and conditions in the Agreement, the applicable tariff. Where there are no provisions for such offering in the Agreement without reference to this Appendix and there is no applicable tariff, the Parties shall meet within thirty (30) days of a written request to do so to negotiate mutually acceptable rates, terms and conditions that shall apply retroactively. If the Parties are unable to reach agreement within sixty (60) days of the written request to negotiate, any outstanding disputes shall be handled in accordance with the Dispute Resolution procedures in the Agreement.
- 3.4 The "Offering Window" for the Local Loops Discount for SBC Wisconsin closed on October 15, 2003. Moreover, CLEC shall be entitled to the discount only with respect to those underlying local loops ordered prior to October 16, 2003 for the Local Loop Discount, with a requested installation date of no later than November 15, 2003, as more specifically addressed in Paragraph 46 of the FCC Merger Conditions. Moreover, in the event that any other telecommunications carrier should adopt provisions in this Appendix or Agreement pursuant to Section 252(i) of the Act, or otherwise obtains this Appendix, the adopting CLEC shall not be entitled to the Local Loops Discount unless that CLEC: (1) had an approved and effective FCC Merger Conditions Appendix in its interconnection agreement with SBC Wisconsin that provided for the Local Loops Discount before October 15, 2003; and (2) even then, only with respect to those underlying local loops the Adopting CLEC ordered prior to October 16, 2003 for the Local Loop Discount with a requested installation date of no later than November 15, 2003, as more specifically addressed in Paragraph 46 of the FCC Merger Conditions.

#### 4. PROMOTIONAL DISCOUNTS ON RESALE

- 4.1 The promotional resale discount ("Resale Discount") on telecommunications services that SBC WISCONSIN provides at retail to subscribers who are not telecommunications carriers, where such services are resold to residential end user customers sunset (terminated) in each SBC WISCONSIN on November 8, 2002. Consequently, such discount is not available to any CLEC who did not have an approved and effective FCC Merger Conditions Appendix in each of its Agreements with SBC WISCONSIN that provided for such Resale Discount before November 8, 2002. Thus, notwithstanding anything to the contrary in this Appendix or Agreement, in the event that any other telecommunications carrier should adopt provisions in this Appendix or Agreement pursuant to Section 252(i) of the Act, or otherwise obtains this Appendix, CLEC shall not be entitled to this Resale Discount unless the CLEC: (1) had an approved and effective FCC Merger Conditions Appendix in each of its Agreements with SBC WISCONSIN that provided for this Resale Discount before November 8, 2002; and (2) even then, only with respect to those underlying resold lines the Adopting CLEC ordered prior to November 8, 2002 for this resale discount with a requested installation date of no later than December 7, 2002, as more specifically addressed in Paragraph 48 of the FCC Merger Conditions.
- 4.2 With respect to any CLEC that had an approved and effective FCC Merger Conditions Appendix in its Interconnection Agreement with SBC WISCONSIN that provided for such Resale Discount before November 8, 2002, such CLEC shall continue to receive this promotional discount only for those underlying resold lines CLEC ordered during the Offering Window for this resale discount that has/had a requested installation date of no later than December 7, 2002, as more specifically addressed in Paragraph 48 of the FCC Merger Conditions. Any resold services (such as Call Waiting) provided over a resold customer line that is/was placed in service after December 7, 2002 shall not be eligible for the Resale Discount. Resold services (such as Call Waiting) added to a resold line that qualifies for the Resale Discount (i.e., which was ordered by CLEC during the offering window and has/had a requested installation date of no later than December 7, 2002) shall be eligible for the Resale Discount for the duration of the Promotional Period for the underlying resold service regardless of whether such resold services were added after the end of the Offering Window (i.e., November 8, 2002). SBC/Ameritech is under no obligation to provide a service for resale at the Resale Discount outside the Promotional

Period. For purposes of this subsection, Promotional Period is defined as a period of 36 months from the date a qualifying resold service was installed and operational, or the period during which the resold service remains in service at the same location and for the same telecommunications carrier, whichever is shorter.

- 4.3 If CLEC does not qualify for the Resale Discount, SBC WISCONSIN's provision, if any, and CLEC's payment for promotional resale discounts shall continue to be governed by Appendix Resale as currently contained in the Agreement without reference to this Appendix. Unless SBC receives thirty (30) days advance written notice with instructions to terminate service provided via the Resale Discount or to convert such service to an available alternative service provided by SBC WISCONSIN, then upon expiration of the Resale Discount in any state, the service shall automatically convert to an appropriate SBC WISCONSIN product/service offering pursuant to the rates, terms and conditions of the Agreement or, in the absence of rates, terms and conditions in the Agreement, the applicable tariff. Where there are no provisions for such offering in the Agreement without reference to this Appendix and there is no applicable tariff, the Parties shall meet within 30 days of a written request to do so to negotiate mutually acceptable rates, terms and conditions that shall apply retroactively. If the Parties are unable to reach agreement within 60 days of the written request to negotiate, any outstanding disputes shall be handled in accordance with the Dispute Resolution procedures in the Agreement.

## 5. **CONFLICTING CONDITIONS**

- 5.1 If any of the FCC Merger Conditions in this Appendix and conditions imposed in connection with the merger under state law grant similar rights against SBC WISCONSIN, CLEC shall not have a right to invoke the relevant terms of these FCC Merger Conditions in this Appendix if CLEC has invoked substantially related conditions imposed on the merger under state law in accordance the FCC Merger Conditions.

## 6. **SUSPENSION OF CONDITIONS**

- 6.1 If the FCC Merger Conditions are overturned or any of the provisions of the FCC Merger Conditions that are incorporated herein by reference are amended or modified as a result of any order or finding by the FCC, a court of competent jurisdiction or other governmental and/or regulatory authority, any impacted promotional discounts and other provisions described in this Appendix shall be automatically and without notice suspended as of the date of such termination, order or finding and shall not apply to any product or service purchased by CLEC or provisioned by SBC WISCONSIN after the date of such termination, order or finding. Thereafter, SBC WISCONSIN's continued provision and CLEC's payment for any service or item originally ordered or provided under this Appendix shall be governed by the rates, terms, and conditions as currently contained in the Agreement without reference to this Appendix. In the event that the FCC changes, modifies, adds or deletes any of the FCC Merger Conditions set forth herein, the Parties agree that the FCC's final order controls and takes precedence over the FCC Merger Conditions set forth herein.